

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

OP.No. 11222 of 1997(J)

PETITIONER:

**K.P.PHILIP, RETD.CHIEF MANAGER
(INSPECTION DEPT.) STATE BANK OF TRAVANCORE,
NOW RESIDING AT KAYAMAKKAL HOUSE,
A.O.JOSEPH ROAD, KIZHATHADIYOOR, PALA.**

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS:

**THE MANAGING DIRECTOR,
STATE BANK OF TRAVANCORE,
HEAD OFFICE, POOJAPPURA,
TRIVANDRUM.**

BY ADV. SRI.M.PATHROSE MATHAI

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 15/10/2007, THE COURT ON 30/10/2007 DELIVERED THE
FOLLOWING:**

KSS

O.P.NO.11222/1997 J

ORDER ON C.M.P.19877/1997 IN O.P.NO.11222/1997 J

DISMISSED

30/10/2007

SD/- THOTTATHIL B.RADHAKRISHNAN,
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE ARTICLE OF CHARGES.
- EXT.P2: COPY OF THE STATEMENT OF ALLEGATIONS IN SUPPORT OF THE ARTICLES OF CHARGES.
- EXT.P3: COPY OF THE ENQUIRY REPORT DTD. 27/07/1996.
- EXT.P4: COPY OF THE MEMO DTD. 17/10/96.
- EXT.P5: COPY OF THE ADVOCATE'S NOTICE DTD. 19/03/1997.
- EXT.P6: COPY OF THE REPLY BY THE RESPONDENT DTD. 22/04/1997.
- EXT.P7: COPY OF THE PROCEEDINGS OF THE RESPONDENT DTD. 17/05/1996.
- EXT.P8: COPY OF THE LETTER DTD. 19/04/1997.
- EXT.P9: COPY OF THE CIRCULAR DTD. 15/04/97.
- EXT.P10: COPY OF THE LETTER DTD. 20/05/1996 BY THE PETITIONER.
- EXT.P11: COPY OF THE BILL.
- EXT.P12: COPY OF THE APPEAL PETITION.
- EXT.P13: COPY OF THE LETTER DTD. 18/07/1995.
- EXT.P14: COPY OF THE PROCEEDINGS DTD. 4/08/95.
- EXT.P15: COPY OF THE LETTER DTD. 21/08/95.

KSS

...2/-

....2....

O.P.NO.11222/1997 J

EXT.P15: COPY OF THE LETTER DTD. 10/10/1995.

EXT.P16: COPY OF THE REPLY DTD. 18/10/1995 BY THE PETITIONER.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF REPLY DTD. 4/11/1996 BY THE PETITIONER BEFORE
THE RESPONDENT.

EXT.R1(B): COPY OF ORDER DTD. 29/01/1998 BY THE DISCIPLINARY
AUTHORITY.

EXT.R1(C): COPY OF ORDER DTD. 9/07/198 BY THE APPELLATE
AUTHORITY.

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = =

O.P.No.11222 of 1997-J

= = = = =

Dated this the 30th day of October, 2007.

JUDGMENT

1. Petitioner, who was employed with the State Bank of Travancore, filed this writ petition seeking to quash the proceedings on the basis of Ext.P3 report of enquiry on allegations of misconduct.

2. The allegations against the petitioner, as reflected by Ext.P2, are that during discharge of his official duties in connection with the internal audit and inspection of Kadakkavoor Branch of the Bank from 27-6-1995 to 29-7-1995 he has stayed in a hotel at Varkala from 28-6-1995 to 10-7-1995 paying Rs.1,400/- as rent on a daily tariff of Rs.100/- and thereafter, shifted to another hotel on 11-7-

1995 and incurred an expenditure of Rs.4,465/- for staying there from 11-7-1995 to 30-7-1995 at Rs.235/- per day and that the petitioner made inflated claims towards halting allowance by getting blank sample bills from the hotel and by utilizing the blank forms to prepare bogus bills for the inflated amounts. He is alleged to have received Rs.5,985/- in excess of the actuals expended by him and that such inflated claim was on the basis of the falsified documents. The Bank accordingly initiated disciplinary action against him under Regulation 68 read with Regulation 65 of the State Bank of Travancore (Officers') Service Regulations, 1979.

3. The grounds on which this writ petition is filed are that Ext.P3 enquiry report had been rendered clearing him of all charges while the impugned Ext.P4 proceedings have been initiated disagreeing with the findings of the inquiring authority and that those proceedings are held up indefinitely. It is the further contention of the

petitioner that Ext.P4 proceedings disagreeing with the findings of the inquiring authority, are per se illegal and without notice to the petitioner. He accordingly contends that he is entitled to all the claims put forward by him in Ext.P5 and that the objections raised by the Bank in Ext.P6 reply given to him are totally unsustainable. He claims the entire amount stated in Ext.P5 with interest at 24% per annum from the date of his retirement till the date of actual payment.

4. Noticing that the petitioner had retired on 31-5-1996, there was an interim order issued on C.M.P.19877/1997 in this writ petition filed on 27-6-1997 directing payment of 75% of the retiral benefits. That order was interfered with by the Division Bench by the judgment dated 2-12-1997 in W.A.No.2047/1997 filed by the Bank directing the Bank to conclude the enquiry against the writ petitioner within two months and that if the disciplinary proceedings do not get concluded within that time limit, the entire

pensionary benefits accruing to the petitioner was to be paid.

5. By the time this writ petition came up for final hearing, the contention that survived for consideration was as to whether Ext.P4 by which the competent authority had disagreed with the findings of the inquiring authority, was initiated on account of the non-issuance of any pre-decisional notice and even if it were so, did the petitioner have a further opportunity to complain about the findings in Ext.P4 thereby curing the defect of any pre-decisional notice as regards Ext.P4. Hence, on 28-5-2007, an order was issued by this Court adjourning the proceedings to enable the parties to place on record objections, if any filed by the petitioner to Ext.P4 and the order passed by the disciplinary authority imposing penalty and also a copy of the appeal filed by the petitioner before the appellate authority.

6. Pursuant to that, the Bank has filed an affidavit and Exts.R1(a) to R1(c) on the basis of which, and the other documents on record, the facts stated in the next paragraph emerge.

7. By Ext.P3, the inquiring authority concluded that it has not been successfully proved that the charge-sheeted officer (writ petitioner) procured sample blank bills and prepared bogus bills and that, therefore, the charges levelled against him are not proved. The disciplinary authority disagreed with the findings of the inquiring authority and adverted to the materials and came to the tentative conclusion that the writ petitioner was guilty of the charges and is liable to be inflicted with penalty. The findings arrived at by the disciplinary authority were, therefore, put to the petitioner as per Ext.P4 essentially calling for his explanations/submissions since it was stated that the appropriate decision regarding penalty would be taken after considering his explanations.

Petitioner submitted Ext.R1(a) reply to Ext.P4 offering his explanation in detail in reply to the findings in Ext.P4. After considering Ext.R1(a), the disciplinary authority, as per Ext.R1(b) dated 29-1-1998, concluded that the misconduct is proved and that it is one of a very serious nature attracting severe punishment. It was concluded that resorting to such grave malpractice as of preferring inflated claim by producing bogus rent bills is never expected of an officer like the petitioner with sufficient service and seniority. After taking into consideration the special circumstances, viz. that the petitioner had put in 36 years of service in the Bank and that he had already retired from the Bank's services on 31-5-1996, the Managing Director, as a disciplinary authority, imposed a punishment of withdrawing a part of his pension by Rs.1,500/- per month for four consecutive months starting from the pension payable for the month of February, 1998 under Regulation 43 read with Regulation 45 of the State Bank of Travancore (Employees') Pension Regulations,

1995. The petitioner appealed against Ext.R1(b) decision to the Executive Committee of the Bank, which is the appellate authority. The Executive Committee issued Ext.R1(c) decision after considering the appeal petition submitted by the writ petitioner and related case file placed on the table of the Executive Committee along with all relevant records. The Managing Director Sri.G.G.Vaidya, who decided the case of the petitioner as disciplinary authority, withdrew from the meeting and Dr.N.D.Joshi, Director took the chair. On consideration of the appeal of the petitioner, the appellate authority concluded that the decision of the disciplinary authority was just and appropriate and that the writ petitioner had not raised any valid ground to defer from that decision. The Executive Committee, therefore, rejected the writ petitioner's appeal.

8. That decision of the appellate authority in terms of Regulations which are statutory in nature, has become

final.

9. As already noticed, the decision of the disciplinary authority to disagree with the findings of the inquiring authority was put to the petitioner. It is true that Ext.P4 reflects the specific grounds on which the disciplinary authority decided to disagree with the findings of the inquiring authority. This is, verily, the course to be adopted. The only thing is that the disciplinary authority, by such process, should not reach at a closed mind because, it is required that the delinquent is given an opportunity to show cause against the views of the disciplinary authority. At the same time, without stating reasons, it would be highly objectionable for a disciplinary authority to disagree with the findings of the inquiring authority, even tentatively. Not only that, when the disciplinary authority intends to put a delinquent on notice regarding the intention to render a decision disagreeing with the findings of the inquiring authority,

the disciplinary authority has to notify the delinquent of the specific grounds. Otherwise, it is impossible for a delinquent to answer a notice to show cause against such proposal of the disciplinary authority to disagree with the findings of the inquiring authority. The penultimate paragraph of Ext.P4 clearly indicates that the disciplinary authority had reached at only tentative conclusions in Ext.P4 and had an open mind in further proceeding with the matter. Not only that, in answer to Ext.P4, going by Ext.R1(a), the petitioner had placed all his explanations and submissions by way of answers to the views taken by the disciplinary authority in Ext.P4. All his such submissions and explanations were considered by the disciplinary authority in arriving at Ext.R1(b) decision. So much so, Ext.P4 is not vitiated by any absence of pre-decisional notice. Rules of fair hearing have been appropriately adhered to and there is no violation of any principles of natural justice. The procedure leading to Ext.R1(b), therefore, stands. Ext.R1(c), as already

noticed, has become final in 1998. The disciplinary proceedings are, thus, not liable to be re-opened.

10.I am satisfied with the quality of the findings arrived at in Ext.R1(b) and the nature of procedure. I, therefore, do not find any jurisdictional error or legal infirmity in Ext.P4. Even if I were to extend the consideration to Exts.R1(b) and R1(c), which are not directly under challenge, I find no vitiating count on them.

11.In so far as the gravity of punishment is concerned, financial indiscipline, however small it may be, is not to be countenanced in any sector, at any rate, in banking sector. There is no ground to interfere with the impugned proceedings.

12.Now it needs to be considered whether the petitioner is entitled to any amounts which are allegedly not paid to him.

13.Many of the little allowances and certain reimbursements that the petitioner claims are matters which revolve on disputed questions of fact and which may fall entirely within the realm of the Bank to decide. At any rate, I am sure that the petitioner is not entitled to any amount by way of interest on the amounts claimed by him. However, the question of any interest that the petitioner has allegedly paid to the P.F.Account may require to be considered.

In the result, while affirming Ext.P4 and the further disciplinary procedure that followed, resulting in the penalty that has been imposed on the petitioner, it is directed that the claims of the petitioner for alleged outstandings shall be taken up for consideration by the Managing Director and a decision shall be rendered thereon, having regard to the totality of the facts and circumstances. However, no interest shall be payable to

OP11222/1997

-: 12 :-

the petitioner on such amounts, though the payment by way of interest, regarding the P.F.Account may be considered. The writ petition is disposed of accordingly. No costs.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-

OP11222/1997

-: 13 :-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = =

O.P.No.11222 of 1997-J

= = = = =

JUDGMENT

Dated: 30th October, 2007.